IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 315 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUTCHH DISTRICT CONSTRUCTION INDU.&REHABILITATION FEDERATIO

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 315 of 2001

MR KB ANANDJIWALA for Petitioner No. 1

MR AD OJA, PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondents No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

This Special Criminal Application has been filed by Kachchh District Construction Industries and

Rehabilitation Federation praying to constitute a committee for scrutinising FIRs registered at different Police Stations in the areas of Kachchh-Bhuj and surrounding areas and only after their formal opinion, the police may proceed further for investigation and effecting arrest of the persons charged with the offences in the FIR. It was also prayed for interim relief not to arrest any member of the Federation in the event of any FIR lodged against them till the committee as prayed for is constituted.

2. It appears that this petition has been prepared in the month of March, 2001 and filed in the month of May, 2001 wherein this Court (Coram: H.K.Rathod,J.) vide order dated 10-5-2001 passed the following order:

> "Heard Mr.K.B.Anandjivala, learned advocate for the petitioner and Mr.A.D.Oza, learned P.P. for respondent.
>
> Issue notice to the respondent, returnable on 11th June, 2001."

Thereafter, vide order dated 11-6-2001, the Court has passed the following order:

> "Heard Ld. Advocate Mr.Anandjiwala for the petitioner and Ld.P.P. Mr.A.D.Oza for the State. Rule returnable on 2-7-2001. Meanwhile, respondents are directed to file reply through responsible officer of respondent Nos.2 and 3 and to serve copy thereof to the petitioner in advance. Service of rule is waived by Ld.P.P., Mr.A.D.Oza on behalf of the respondents."

Thereafter, matter could not be proceed further. It has been submitted by learned advocate for the petitioner that members of the Federation, who were shown as accused in various FIRs, have been arrested and thereafter they have been released on bail and, therefore, question of passing any order regarding prayer para 7(ii) of this petition does not arise.

3. Heard learned counsel for the petitioner, Mr.K.B.Anandjiwala only on the point of constituting a committee for the purpose of scrutinising the FIRs lodged against members of the petitioner-Kachchh District Construction Industries and Rehabilitation Federation. Also heard learned P.P., Mr.A.D.Oza for the State of Gujarat.

4. On a specific question being asked to Mr.Anandjiwala as to under which provision this Court can issue writ or direction to the otherside for constituting a committee as prayed for by him, he is not in a position to lay his fingers on any of the Sections of the Code of Criminal Procedure. However, he has argued that since the earthquake is an act of God, the concerned accused should not be punished.

5. A detailed affidavit-in-reply filed by Shri Vivek Srivastav, District Superintendent of Police, Ktuch-Bhuj shows that various complaints have been lodged and and same is being investigated by the authority and it is in crucial stage and how to investigate the matter and in what manner it should be done are prescribed in the Criminal Procedure Code itself and this Court cannot supervise the function of investigation or cannot sit on the driving seat and direct the Investigating Officer to investigate in particular manner as same are entirely the discretion of the Investigating Officer. However, Investigating Officer is expected to carry out the investigation according to law and complete the same as expeditiously as possible. Giving a direction for constituting a committee of an independent person as desired by the petitioner is out of question because in any circumstances of the matter accused cannot be permitted to have control of investigation at any stage. Over and above, the grievance raised by the petitioner in this petition is that Investigating Officer will impose Sec.304 of Indian Penal Code on the members of the petitioner Federation. It is too early to come to such a conclusion as the investigation is not yet over and as told by learned P.P., Mr.Oza, that yet report of the laboratory has not been received by them and they are awaiting for it and, therefore, what section is required to be imposed on the accused cannot be decided by this Court at this stage. If any grievance on the report of the investigation is there, for that, protection is provided in Cr.P.C. If charge-sheet has been submitted in the Court against the members of the petitioner Federation and if they feel that particular section imposed on them is not applicable to them, then there is a stage which has been provided in Cr.P.C. more particularly Sec.227 of Cr.P.C. that at the time of framing the charge or prior to that i.e. after receiving the charge-sheet, accused can submit an application before the Court restraining it from framing the charge or discharge them from the charge. If at all they are not satisfied with the said remedy, other remedy available under Sec.482 of Cr.P.C. for quashing can be used. But the remedy which has been sought by the

petitioner by way of present petition at this stage cannot be allowed to be availed of as it is premature and, therefore, same is required to be rejected at this stage. Moreover, this Court cannot order for appointing any committee or permit any committee to supervise the investigation which has been done or which is likely to be done by the Investigating Officer.

6. In view of what have been stated hereinabove, this petition is rejected. Rule is discharged.

(R.P.DHOLAKIA,J.)
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